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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 180517486-8772-01]**

**RIN 0648-XG263**

**Atlantic Highly Migratory Species; 2019 Atlantic Shark Commercial Fishing Year**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would establish quotas, opening dates, and retention limits for the 2019 fishing year for the Atlantic commercial shark fisheries. Quotas would be adjusted as required or allowable based on any over- and/or underharvests experienced during the 2018 fishing year. In addition, NMFS proposes opening dates and commercial retention limits based on adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark fishermen in the northwestern Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea.

**DATES:** Written comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2018-0097, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0097](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0097), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Brad McHale, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of this proposed rule and supporting documents are available from the HMS Management Division website at <https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species> or by contacting Lauren Latchford or Chanté Davis by phone at (301) 427-8503.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz, Lauren Latchford, or Chanté Davis at (301) 427-8503.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established commercial shark retention limits, commercial quotas for species and management groups, and accounting measures for under- and overharvests for the shark fisheries. The FMP also includes adaptive management measures, such as flexible opening dates for the fishing year and inseason adjustments to shark trip limits, which provide management flexibility in furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

#### *2019 Proposed Quotas*

This proposed rule would adjust the quota levels for the different shark stocks and management groups for the 2019 Atlantic commercial shark fishing year based on over- and underharvests that occurred during the 2018 fishing year, consistent with existing regulations at 50 CFR 635.27(b). Over- and underharvests are accounted for in the same region, sub-region, and/or fishery in which they occurred the following year, except that large overharvests may be spread over a number of subsequent fishing years up to a maximum of five years. Shark stocks that are overfished, have overfishing occurring, or have an unknown status, as well as management groups that contain one or more stocks that are overfished, have overfishing occurring, or have an unknown stock status, will not have underharvest carried over in the following year. Stocks or management groups that are not overfished and have no overfishing

occurring may have any underharvest carried over in the following year, up to 50 percent of the base quota.

Based on harvests to date, and after considering catch rates and landings from previous years, NMFS proposes to adjust the 2019 quotas for some management groups as shown in Table 1. In the final rule, NMFS will adjust the quotas as needed based on dealer reports received by mid-October 2018. Thus, all of the 2019 proposed quotas for the respective stocks and management groups will be subject to further adjustment after NMFS considers the dealer reports through mid-October. All dealer reports that are received after the October date will be used to adjust 2020 quotas, as appropriate.

While the sub-quota for the western Gulf of Mexico aggregated large coastal shark (LCS) was exceeded this year, based on current landings in the eastern Gulf of Mexico for that management group and based on catch rates from previous years from the eastern Gulf of Mexico, NMFS does not believe the overall regional Gulf of Mexico aggregated LCS quota will be exceeded. Thus, NMFS proposes the base line quotas for the eastern and western Gulf of Mexico sub-regions. If catch rates in the eastern Gulf of Mexico increase, it is possible that in the final rule NMFS would need to reduce the western Gulf of Mexico sub-regional aggregated LCS quota to account for that sub-region's overharvest.

Because the Gulf of Mexico blacktip shark management group and smoothhound shark management groups in the Gulf of Mexico and Atlantic regions have been determined not to be overfished, and to have no overfishing occurring, available underharvest (up to 50 percent of the base quota) from the 2018 fishing year for these management groups may be applied to the respective 2019 quotas. NMFS proposes to account for any underharvest of Gulf of Mexico

blacktip sharks by dividing underharvest between the eastern and western Gulf of Mexico sub-regional quotas based on the sub-regional quota split percentage implemented in Amendment 6 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP).

For the sandbar shark, aggregated large coastal shark (LCS), hammerhead shark, non-blacknose small coastal shark (SCS), blacknose shark, blue shark, porbeagle shark, and pelagic shark (other than porbeagle or blue sharks) management groups, the 2018 underharvests cannot be carried over to the 2019 fishing year because those stocks or management groups have been determined to be overfished, overfished with overfishing occurring, or have an unknown status. Furthermore, with the exception of the sub-regional western Gulf of Mexico overharvest of the aggregated LCS quota described above, there were no overharvests to account for in these management groups. Thus, NMFS proposes that quotas for these management groups be equal to the annual base quota without adjustment.

The proposed 2019 quotas by species and management group are summarized in Table 1; the description of the calculations for each stock and management group can be found below.

Table 1. 2019 Proposed Quotas and Opening Dates for the Atlantic Shark Management Groups. All quotas and landings are dressed weight (dw), in metric tons (mt), unless specified otherwise. Table includes landings data as of July 13, 2018; final quotas are subject to change based on landings as of October 2018. 1 mt = 2,204.6 lb.

Region or Sub-region	Management Group	2018 Annual Quota (A)	Preliminary 2018 Landings (B) <sup>1</sup>	Adjustments <sup>2</sup> (C)	2019 Base Annual Quota (D)	2019 Proposed Annual Quota (D+C)
Western Gulf of Mexico	Blacktip Sharks	347.2 mt dw 765,392 lb dw	330.2 mt dw 727,992 lb dw	34.6 mt dw <sup>3</sup> 76,401 lb dw	231.0 mt dw 510,261 lb dw	265.6 mt dw 586,662.2 lb dw
	Aggregated Large Coastal Sharks	72 mt dw 158,724 lb dw	92.2 mt dw 203,400 lb dw	-	72.0 mt dw 158,724 lb dw	72.0 mt dw 158,724 lb dw
	Hammerhead Sharks	11.9 mt dw 26,301 lb dw	11.0 mt dw 24,292 lb dw	-	11.9 mt dw 26,301 lb dw	11.9 mt dw 26,301 lb dw
Eastern Gulf of Mexico	Blacktip Sharks	37.7 mt dw 83,158 lb dw	16.3 mt dw 35,856 lb dw	3.8 mt dw <sup>3</sup> 8,301 lb dw	25.1 mt dw 55,439 lb dw	28.9 mt dw 63,740 lb dw
	Aggregated Large Coastal Sharks	85.5 mt dw 188,593 lb dw	37.5 mt dw 82,751 lb dw	-	85.5 mt dw 188,593 lb dw	85.5 mt dw 188,593 lb dw
	Hammerhead Sharks	13.4 mt dw 29,421 lb dw	6.2 mt dw 13,696 lb dw	-	13.4 mt dw 29,421 lb dw	13.4 mt dw 29,421 lb dw
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	112.6 mt dw 248,215 lb dw	27.5 mt dw 60,731 lb dw	- -	112.6 mt dw 248,215 lb dw	112.6 mt dw 248,215 lb dw
	Smoothhound Sharks	504.6 mt dw 1,112,441 lb dw	0 mt dw 0 lb dw	168.2 mt dw 370,814 lb dw	336.4 mt dw 741,627 lb dw	504.6 mt dw 1,112,441 lb dw
Atlantic	Aggregated Large Coastal	168.9 mt dw 372,552 lb dw	45.9 mt dw 101,245 lb dw	- -	168.9 mt dw 372,552 lb dw	168.9 mt dw 372,552 lb dw

	Sharks					
	Hammerhead Sharks	27.1 mt dw 59,736 lb dw	4.9 mt dw 10,777 lb dw	- -	27.1 mt dw 59,736 lb dw	27.1 mt dw 59,736 lb dw
	Non-Blacknose Small Coastal Sharks	264.1 mt dw 582,333 lb dw	55.1 mt dw 121,385 lb dw	- -	264.1 mt dw 582,333 lb dw	264.1 mt dw 582,333 lb dw
	Blacknose Sharks	17.2 mt dw	3.4 mt dw	-	17.2 mt dw	17.2 mt dw
	(South of 34° N. lat. only)	(37,921 lb dw)	7,501 lb dw	-	37,921 lb dw	3,7921 lb dw
	Smoothhound Sharks	1802.6 mt dw 3,971,587 lb dw	261.4 mt dw 576,181 lb dw	600.85 mt dw 1,324,634 lb dw	1201.7 mt dw 2,649,268 lb dw	1802.55 mt dw 3,973,902 lb dw
No regional quotas	Non-Sandbar LCS Research	50.0 mt dw 110,230 lb dw	11.2 mt dw 24,799 lb dw	- -	50.0 mt dw 110,230 lb dw	50.0 mt dw 110,230 lb dw
	Sandbar Shark Research	90.7 mt dw 199,943 lb dw	31.0 mt dw 68,443 lb dw	- -	90.7 mt dw 199,943 lb dw	90.7 mt dw 199,943 lb dw
	Blue Sharks	273.0 mt dw 601,856 lb dw	< 13.6 mt dw (< 30,000 lb dw)	- -	273.0 mt dw 601,856 lb dw	273.0 mt dw 601,856 lb dw
	Porbeagle Sharks	1.7 mt dw 3,748 lb dw	0 mt dw 0 lb dw	- -	1.7 mt dw 3,748 lb dw	1.7 mt dw 3,748 lb dw
	Pelagic Sharks Other Than Porbeagle or Blue sharks	488.0 mt dw 1,075,856 lb dw	38.1 mt dw 83,896 lb dw	- -	488.0 mt dw 1,075,856 lb dw	488.0 mt dw 1,075,856 lb dw

<sup>1</sup> Landings are from January 1, 2018, through July 13, 2018, and are subject to change.

<sup>2</sup> Underharvest adjustments can only be applied to stocks or management groups that are not overfished and have no overfishing occurring. Also, the underharvest adjustments cannot exceed 50 percent of the base quota.

<sup>3</sup> This proposed rule would increase the overall Gulf of Mexico blacktip shark quota due to an overall underharvest of 38.4 mt dw (84,702 lb dw) in 2018. The overall quota would be split based on percentages that are allocated to each sub-region, as explained in the text.





### *1. Proposed 2019 Quotas for the Gulf of Mexico Region Shark Management Groups*

The 2019 proposed commercial quota for blacktip sharks in the western Gulf of Mexico sub-region is 265.6 mt dw (586,662 lb dw) and the eastern Gulf of Mexico sub-region is 28.9 mt dw (63,740 lb dw; Table 1). As of July 13, 2018, preliminary reported landings for blacktip sharks in the western Gulf of Mexico sub-region were at 95 percent (330.2 mt dw) of their 2018 quota levels (347.2 mt dw), while the blacktip sharks in the eastern Gulf of Mexico sub-region were at 43 percent (16.3 mt dw) of their 2018 quota levels (37.7 mt dw). Reported landings have not exceeded the 2018 quota to date, and the western Gulf of Mexico sub-region fishery was closed on March 13, 2018 (83 FR 10802). Gulf of Mexico blacktip sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for blacktip sharks within the Gulf of Mexico region therefore could be applied to the 2019 quotas up to 50 percent of the base quota. Additionally, any underharvest would be divided between the two sub-regions, based on the percentages that are allocated to each sub-region, which are set forth in § 635.27(b)(1)(ii)(C). To date, the overall Gulf of Mexico blacktip shark management group is underharvested by 38.4 mt dw (84,702 lb dw). Accordingly, the western Gulf of Mexico blacktip shark quota would be increased by 34.6 mt dw or 90.2 percent of the underharvest, while the eastern Gulf of Mexico blacktip shark sub-regional quota would be increased by 3.8 mt dw, or 9.8 percent of the underharvest (Table 1). Thus, the proposed western sub-regional Gulf of Mexico blacktip shark commercial quota is 265.6 mt dw (586,662 lb dw), and the proposed eastern sub-regional Gulf of Mexico blacktip shark commercial quota is 28.9 mt dw (63,740 lb dw).

The 2019 proposed commercial quota for aggregated LCS in the western Gulf of Mexico

sub-region is 72.0 mt dw (158,724 lb dw), and the eastern Gulf of Mexico sub-region is 85.5 mt dw (188,593 lb dw; Table 1). As of July 13, 2018, preliminary reported landings for aggregated LCS in the western Gulf of Mexico sub-region were at 128 percent (92.2 mt dw) of their 2018 quota levels (72.0 mt dw), while the aggregated LCS in the eastern Gulf of Mexico sub-region were at 44 percent (37.5 mt dw) of their 2018 quota levels (85.5 mt dw). Reported landings have not exceeded the overall Gulf of Mexico regional 2018 quota to date, and the western aggregated LCS sub-region fishery was closed on March 13, 2018 (83 FR 10802). Given the unknown status of some of the shark species within the Gulf of Mexico aggregated LCS management group, underharvests cannot be carried over pursuant to § 635.27(b)(2)(ii). Therefore, based on both preliminary estimates and catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2019 quotas for aggregated LCS in the western Gulf of Mexico and eastern Gulf of Mexico sub-regions be equal to their annual base quotas without adjustment, because the overall regional quota has not been overharvested and because underharvests cannot be carried over due to stock status.

The 2019 proposed commercial quotas for hammerhead sharks in the western Gulf of Mexico sub-region and eastern Gulf of Mexico sub-region are 11.9 mt dw (26,301 lb dw) and 13.4 mt dw (29,421 lb dw), respectively (Table 1). As of July 13, 2018, preliminary reported landings for hammerhead sharks in the western Gulf of Mexico sub-region were at 92 percent (11.0 mt dw) of their 2018 quota levels (11.9 mt dw), while landings of hammerhead sharks in the eastern Gulf of Mexico sub-region were at 47 percent (6.2 mt dw) of their 2018 quota levels (13.4 mt dw). Reported landings from both Gulf of Mexico and Atlantic regions have not exceeded the 2018 overall hammerhead quota to date, and the western hammerhead shark Gulf of Mexico sub-region

fishery was closed on March 13, 2018 (83 FR 10802). Given the overfished status of the scalloped hammerhead shark, the hammerhead shark quota cannot be adjusted for any underharvests.

Therefore, based on both preliminary estimates and catch rates from previous years, the fact that the 2018 overall hammerhead shark quota has not been overharvested to date, and consistent with the current regulations at § 635.27(b)(2)(ii), NMFS proposes that the 2019 quotas for hammerhead sharks in the western Gulf of Mexico and eastern Gulf of Mexico sub-regions be equal to their annual base quotas without adjustment.

The 2019 proposed commercial quota for non-blacknose SCS in the Gulf of Mexico region is 112.6 mt dw (248,215 lb dw). As of July 13, 2018, preliminary reported landings of non-blacknose SCS were at 24 percent (27.5 mt dw) of their 2018 quota level (112.6 mt dw) in the Gulf of Mexico region. Reported landings have not exceeded the 2018 quota to date. Given the unknown status of bonnethead sharks within the Gulf of Mexico non-blacknose SCS management group, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on both preliminary estimates and catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2019 quota for non-blacknose SCS in the Gulf of Mexico region be equal to the annual base quota without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

The 2019 proposed commercial quota for smoothhound sharks in the Gulf of Mexico region is 504.6 mt dw (1,112,441 lb dw). As of July 13, 2018, there are no preliminary reported landings of smoothhound sharks in the Gulf of Mexico region. Gulf of Mexico smoothhound sharks have not been declared to be overfished, to have overfishing occurring, or to have an

unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for smoothhound sharks within the Gulf of Mexico region therefore could be applied to the 2019 quotas up to 50 percent of the base quota. Accordingly, NMFS proposes to increase the 2019 Gulf of Mexico smoothhound shark quota to adjust for anticipated underharvests in 2018 as allowed. The proposed 2019 adjusted base annual quota for Gulf of Mexico smoothhound sharks is 504.6 mt dw (336.4 mt dw annual base quota + 168.2 mt dw 2018 underharvest = 504.6 mt dw 2019 adjusted annual quota).

## *2. Proposed 2019 Quotas for the Atlantic Region Shark Management Groups*

The 2019 proposed commercial quota for aggregated LCS in the Atlantic region is 168.9 mt dw (372,552 lb dw). As of July 13, 2018, the aggregated LCS fishery in the Atlantic region is still open and preliminary landings indicate that only 27 percent of the quota, or 45.9 mt dw, has been harvested. Given the unknown status of some of the shark species within the Atlantic aggregated LCS management group, underharvests cannot be carried over pursuant to § 635.27(b)(2)(ii). Therefore, based on both preliminary estimates and catch rates from previous years, and consistent with current regulations at § 635.27(b)(2), NMFS proposes that the 2018 quota for aggregated LCS in the Atlantic region be equal to the annual base quota without adjustment, because there have not been any overharvests and underharvests cannot be carried over due to stock status.

The 2019 proposed commercial quota for hammerhead sharks in the Atlantic region is 27.1 mt dw (59,736 lb dw). Currently, the hammerhead shark fishery in the Atlantic region is still open and preliminary landings as of July 13, 2018, indicate that only 18 percent of the Atlantic regional quota, or 4.9 mt dw, has been harvested. Reported landings from both Gulf of Mexico and Atlantic regions have not exceeded the 2018 overall hammerhead quota to date. Given the overfished status of hammerhead sharks, underharvests cannot be carried forward

pursuant to § 635.27(b)(2)(ii). Therefore, based on both preliminary estimates and catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2019 quota for hammerhead sharks in the Atlantic region be equal to the annual base quota without adjustment, because the overall hammerhead shark quota has not been overharvested, and because underharvests cannot be carried over due to stock status.

The 2019 proposed commercial quota for non-blacknose SCS in the Atlantic region is 264.1 mt dw (582,333 lb dw). As of July 13, 2018, preliminary reported landings of non-blacknose SCS were at 21 percent (55.1 mt dw) of their 2018 quota level in the Atlantic region. Reported landings have not exceeded the 2018 quota to date. Given the unknown status of bonnethead sharks within the Atlantic non-blacknose SCS management group, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates of catch rates from previous years, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2019 quota for non-blacknose SCS in the Atlantic region be equal to the annual base quota without adjustment, because there have not been any overharvests, and because underharvests cannot be carried over due to stock status.

The 2019 proposed commercial quota for blacknose sharks in the Atlantic region is 17.2 mt dw (37,921 lb dw). This quota is available in the Atlantic region only for those vessels operating south of 34° N. latitude. North of 34° N. latitude, retention, landing, or sale of blacknose sharks is prohibited. As of July 13, 2018, preliminary reported landings of blacknose sharks were at 20 percent (3.4 mt dw) of their 2018 quota levels in the Atlantic region. Reported landings have not exceeded the 2018 quota to date. Pursuant to § 635.27(b)(2), because blacknose sharks have been declared to be overfished with overfishing occurring in the Atlantic

region, NMFS could not carry forward the remaining underharvest. Therefore, NMFS proposes that the 2019 Atlantic blacknose shark quota be equal to the annual base quota without adjustment.

The 2019 proposed commercial quota for smoothhound sharks in the Atlantic region is 1,802.6 mt dw (3,973,902 lb dw). As of July 13, 2018, preliminary reported landings of smoothhound sharks were at 14 percent (261.4 mt dw) of their 2018 quota levels in the Atlantic region. Atlantic smoothhound sharks have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(2)(ii), underharvests for smoothhound sharks within the Atlantic region therefore could be applied to the 2019 quotas up to 50 percent of the base quota. Accordingly, NMFS proposes to increase the 2019 Atlantic smoothhound shark quota to adjust for anticipated underharvests in 2018 as allowed. The proposed 2019 adjusted base annual quota for Atlantic smoothhound sharks is 1,802.6 mt dw (1,201.7 mt dw annual base quota + 600.9 mt dw 2018 underharvest = 1,802.6 mt dw 2019 adjusted annual quota).

### *3. Proposed 2019 Quotas for Shark Management Groups with No Regional Quotas*

The 2019 proposed commercial quotas within the shark research fishery are 50 mt dw (110,230 lb dw) for research LCS and 90 mt dw (199,943 lb dw) for sandbar sharks. Within the shark research fishery, as of July 13, 2018, preliminary reported landings of research LCS were at 22 percent (11.2 mt dw) of their 2018 quota levels, and sandbar shark reported landings were at 34 percent (31.0 mt dw) of their 2018 quota levels. Reported landings have not exceeded the 2018 quotas to date. Under § 635.27(b)(2)(ii), because sandbar sharks and scalloped hammerhead sharks within the research LCS management group have been determined to be

either overfished or overfished with overfishing occurring, underharvests for these management groups cannot be carried forward to the 2019 quotas. Therefore, based on preliminary estimates, and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2019 quota in the shark research fishery be equal to the annual base quota without adjustment because there have not been any overharvests, and because underharvests cannot be carried over due to stock status.

The 2019 proposed commercial quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 273.0 mt dw (601,856 lb dw), 1.7 mt dw (3,748 lb dw), and 488.0 mt dw (1,075,856 lb dw), respectively. As of July 13, 2018, preliminary reported landings of blue sharks were at less than 5 percent (less than 13.6 mt dw) of their 2018 quota level (273.0 mt dw), there are no preliminary reported landings of porbeagle sharks, and landings of pelagic sharks (other than porbeagle and blue sharks) were at 8 percent (38.1 mt dw) of their 2018 quota level (488.0 mt dw). Given that these pelagic species are overfished, have overfishing occurring, or have an unknown status, underharvests cannot be carried forward pursuant to § 635.27(b)(2)(ii). Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(2), NMFS proposes that the 2019 quotas for blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) be equal to their annual base quotas without adjustment, because there have not been any overharvests and because underharvests cannot be carried over due to stock status.

#### *4. Proposed Opening Dates and Retention Limits for the 2019 Atlantic Commercial Shark Fishing Year*

For each fishery, NMFS considered the seven “Opening Commercial Fishing Season Criteria” listed at § 635.27(b)(3). The Criteria includes factors such as the available annual quotas for the current fishing season, estimated season length and average weekly catch rates from previous years, length of the season and fishery participation in past years, impacts to accomplishing objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments, temporal variation in behavior or biology of target species (e.g., seasonal distribution or abundance), impact of catch rates in one region on another, and effects of delayed openings.

NMFS applied the Opening Commercial Fishing Season Criteria by examining the over- and underharvests of the different management groups in the 2018 fishing year to determine the likely effects of the proposed commercial quotas for 2019 on shark stocks and fishermen across regional and sub-regional fishing areas. NMFS also examined the potential season length and previous catch rates to ensure, to the extent practicable, that equitable fishing opportunities be provided to fishermen in all areas. Lastly, NMFS examined the seasonal variation of the different species/management groups and the effects on fishing opportunities.

NMFS also considered the six “Inseason trip limit adjustment criteria” listed at § 635.24(a)(8) for directed shark limited access permit holders intending to land LCS other than sandbar sharks. Those criteria are: the amount of remaining shark quota in the relevant area or region, to date, based on dealer reports; the catch rates of the relevant shark species/complexes, to date, based on dealer reports; estimated date of fishery closure based on when the landings are projected to reach 80-percent of the available overall, regional, and/or sub-regional quota, if the fishery’s landings are not projected to reach 100 percent of the applicable quota before the end of the season, or when the season of a quota-linked management group is closed; effects of the



adjustment on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species based on scientific and fishery-based knowledge; and/or effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

After considering all these criteria, NMFS is proposing to open the 2019 Atlantic commercial shark fishing season for all shark management groups in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, on or about January 1, 2019, after the publication of the final rule for this action (Table 2). NMFS is also proposing to start the 2019 commercial shark fishing season with the commercial retention limit of 36 LCS other than sandbar sharks per vessel per trip in both the eastern and western Gulf of Mexico sub-regions, and a commercial retention limit of 25 LCS other than sandbar sharks per vessel per trip in the Atlantic region (Table 2). NMFS will consider public comments received during the current year and catch rates from this year. Any retention limits that are proposed could change as a result of public comments as well as catch rates and landings information based on updated data available when drafting the final rule.

**Table 2. Quota Linkages, Season Opening Dates, and Commercial Retention Limit by Regional or Sub-Regional Shark Management Group.**

Region or Sub-region	Management Group	Quota Linkages	Season Opening Dates	Commercial Retention Limits for Directed Shark Limited Access Permit Holders (inseason adjustments are possible)
Western Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2019	36 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		

	Hammerhead Sharks			
Eastern Gulf of Mexico	Blacktip Sharks	Not Linked	January 1, 2019	36 LCS other than sandbar sharks per vessel per trip
	Aggregated Large Coastal Sharks	Linked		NMFS anticipates an inseason increase to 50 large coastal sharks other than sandbar sharks per vessel per trip around April 1, 2019
	Hammerhead Sharks			
Gulf of Mexico	Non-Blacknose Small Coastal Sharks	Not Linked	January 1, 2019	N/A
	Smoothhound Sharks	Not Linked	January 1, 2019	N/A
Atlantic	Aggregated Large Coastal Sharks	Linked	January 1, 2019	25 LCS other than sandbar sharks per vessel per trip
	Hammerhead Sharks			If quota is landed quickly (e.g., if approximately 20 percent of quota is caught at the beginning of the year), NMFS anticipates an inseason reduction (e.g., to 3 or fewer LCS other than sandbar sharks per vessel per trip), then an inseason increase to 36 LCS other than sandbar sharks per vessel per trip around July 15, 2019
	Non-Blacknose Small Coastal Sharks	Linked (South of 34° N. lat. only)	January 1, 2019	N/A
	Blacknose Sharks (South of 34° N. lat. only)			8 Blacknose sharks per vessel per trip (applies to directed and incidental permit holders)
		Smoothhound Sharks	Not Linked	January 1, 2019
No regional quotas	Non-Sandbar LCS Research	Linked	January 1, 2019	N/A
	Sandbar Shark Research			
	Blue Sharks	Not Linked	January 1, 2019	N/A
	Porbeagle Sharks			
	Pelagic Sharks			

	Other Than Porbeagle or Blue			
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In the Gulf of Mexico region, NMFS proposes opening the fishing season on or about January 1, 2019, for the aggregated LCS, blacktip sharks, and hammerhead shark management groups with the commercial retention limits of 36 LCS other than sandbar sharks per vessel per trip for directed shark permit holders in the eastern and western sub-region. This opening date and retention limit combination would provide, to the extent practicable, equitable opportunities across the fisheries management sub-regions. This opening date takes into account all the season opening criteria listed in § 635.27(b)(3), and particularly the criteria that NMFS consider the length of the season for the different species and/or management group in the previous years (§ 635.27(b)(3)(ii) and (iii)) and whether fishermen were able to participate in the fishery in those years (§ 635.27(b)(3)(v)). The proposed commercial retention limits take into account the criteria listed in § 635.24(a)(8), and particularly the criterion that NMFS consider the catch rates of the relevant shark species/complexes based on dealer reports to date (§ 635.24(a)(8)(ii)). NMFS may also adjust the retention limit in the Gulf of Mexico region throughout the season to ensure fishermen in all parts of the region have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks (see the criteria listed at § 635.27(b)(3)(v) and § 635.24(a)(8)(ii), (v), and (vi)). In 2018, the aggregated LCS, hammerhead, and blacktip shark management groups in the western Gulf of Mexico sub-region were closed on March 13, 2018 (82 FR 20447). As such, in 2019, NMFS is proposing a reduction in the commercial trip limit for these management groups in order to ensure the management group is open until at least

April 2019, which is when the State of Louisiana closes state waters to shark fishing and when that State has previously asked that NMFS close Federal shark fisheries to match state regulations (see the criteria listed at § 635.27(b)(3)(vii) and § 635.24(a)(8)(iii)). In the eastern Gulf of Mexico, NMFS is proposing a lower trip limit to ensure fishermen in both Gulf of Mexico sub-regions have an opportunity to harvest aggregated LCS, blacktip sharks, and hammerhead sharks and to reduce any confusion or inequities caused by establishing different catch limits for each sub-region. When the western Gulf of Mexico sub-region closes, which is expected to occur around April 1, 2019, NMFS may increase the eastern Gulf of Mexico sub-region retention limit, potentially up to 50 or 55 sharks per trip. Modifying the retention limit on an inseason basis in this manner is similar to what NMFS has done successfully in recent years in the Atlantic region. NMFS expects such changes in retention limit to allow fishermen in the eastern Gulf of Mexico the opportunity to fully land the available quotas.

In the Atlantic region, NMFS proposes opening the aggregated LCS and hammerhead shark management groups on or about January 1, 2019. This opening date is the same date that these management groups opened in 2018. As described below, this opening date also takes into account all the criteria listed in § 635.27(b)(3), and particularly the criterion that NMFS consider the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species and/or management quotas (§ 635.27(b)(3)(v)). The 2018 data indicates that an opening date of January 1, coupled with inseason adjustments to the retention limit, provided a reasonable opportunity for fishermen in every part of each region to harvest a portion of the available quotas (§ 635.27(b)(3)(i)) while accounting for variations in seasonal distribution of the different species

in the management groups (§ 635.27(b)(3)(iv)). In 2018, when the aggregated LCS quota was harvested too quickly, NMFS reduced the retention limit to three sharks per trip (May 10, 2018; 83 FR 17765) to allow fishermen in the North Atlantic an opportunity to fish later in the year when sharks are available in the North Atlantic area (see the criteria at § 635.24(a)(3)(i), (ii), (v), and (vi)). NMFS then increased the retention limit to 36 sharks per trip on July 18, 2018 (83 FR 33870), to increase fishing opportunities for all fishermen across the Atlantic region. Because the quotas we propose for 2019 are the same as the quotas in 2018, NMFS expects that the season lengths and therefore the participation of various fishermen throughout the region, would be similar in 2019 (§ 635.27(b)(3)(ii) and (iii)). Based on the recent performance of the fishery, the January 1 opening date appears to meet the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments (§ 635.27(b)(3)(vi)). Therefore, changing the opening date in the fishery seems unnecessary.

In addition, for the aggregated LCS and hammerhead shark management groups in the Atlantic region, NMFS proposes opening the fishing year with the commercial retention limit for directed shark limited access permit holders of 25 LCS other than sandbar sharks per vessel per trip. This retention limit should allow fishermen to harvest some of the 2019 quota at the beginning of the year when sharks are more prevalent in the South Atlantic area (see the criteria at § 635.24(a)(3)(i), (ii), (v), and (vi)). As was done in 2018, if it appears that the quota is being harvested too quickly (i.e., about 20 percent) to allow directed fishermen throughout the entire region an opportunity to fish and ensure enough quota remains until later in the year, NMFS would reduce the commercial retention limits to incidental levels (3 LCS other than sandbar sharks per vessel per trip) or another level calculated to reduce the harvest of LCS taking into

account § 635.27(b)(3) and the inseason trip limit adjustment criteria listed in § 635.24(a)(8). If the quota continues to be harvested quickly, NMFS could reduce the retention limit to 0 LCS other than sandbar sharks per vessel per trip to ensure enough quota remains until later in the year. If either situation occurs, NMFS would publish in the **Federal Register** notification of any inseason adjustments of the retention limit to an appropriate limit of sharks per trip. In 2018, NMFS reduced the retention limit to 3 LCS other than sandbar sharks on May 10, 2018 (83 FR 21744) when the aggregated LCS landings reached approximately 20 percent of the aggregated LCS quota, and did not need to reduce it further.

Also, as was done in 2018, NMFS will consider increasing the commercial retention limits per trip at a later date if necessary to provide fishermen in the northern portion of the Atlantic region an opportunity to retain aggregated LCS and hammerhead sharks after considering the appropriate inseason adjustment criteria. Similarly, at some point later in the year (e.g., July 15), potentially equivalent to how the 2018 fishing season operated, NMFS may consider increasing the retention limit to 36 LCS other than sandbar sharks per vessel per trip or another amount, as deemed appropriate, after considering the inseason trip limit adjustment criteria. If the quota is being harvested too quickly or too slowly, NMFS could adjust the retention limit appropriately to ensure the fishery remains open most of the rest of the year. Since the fishery is still open with a majority of the quota available, NMFS will monitor the rest of the fishing year and could make changes to the proposed 2019 opening date if necessary to ensure equitable fishing opportunities.

All of the shark management groups would remain open until December 31, 2019, or until NMFS determines that the landings for any shark management group have reached, or are

projected to reach, 80-percent of the available overall, regional, and/or sub-regional quota, if the fishery's landings are not projected to reach 100 percent of the applicable quota before the end of the season, or when the quota-linked management group is closed. If NMFS determines that a non-linked shark species or management group must be closed, then, consistent with § 635.28(b)(2) for non-linked quotas (e.g., eastern Gulf of Mexico blacktip, western Gulf of Mexico blacktip, Gulf of Mexico non-blacknose SCS, pelagic sharks, or the Atlantic or Gulf of Mexico smoothhound sharks), NMFS will publish in the **Federal Register** a notice of closure for that shark species, shark management group, region, and/or sub-region that will be effective no fewer than four days from the date of filing (83 FR 31677). For the blacktip shark management group, regulations at § 635.28(b)(5)(i) through (v) authorize NMFS to close the management group before landings reach, or are expected to reach, 80-percent of the available overall, regional, and/or sub-regional quota, after considering the following criteria and other relevant factors: season length based on available sub-regional quota and average sub-regional catch rates; variability in regional and/or sub-regional seasonal distribution, abundance, and migratory patterns; effects on accomplishing the objectives of the 2006 Consolidated Atlantic HMS FMP and its amendments; amount of remaining shark quotas in the relevant sub-region; and regional and/or sub-regional catch rates of the relevant shark species or management groups. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for the shark species or management group are closed, even across fishing years.

If NMFS determines that a linked shark species or management group must be closed, then, consistent with § 635.28(b)(3) for linked quotas and the Final Rule to Revise Atlantic

Highly Migratory Species Shark Fishery Closure Regulations (83 FR 31677), NMFS will publish in the **Federal Register** a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than four days from date of filing. From the effective date and time of the closure until NMFS announces, via the publication of a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for all linked species and/or management groups are closed, even across fishing years. The linked quotas of the species and/or management groups are Atlantic hammerhead sharks and Atlantic aggregated LCS; eastern Gulf of Mexico hammerhead sharks and eastern Gulf of Mexico aggregated LCS; western Gulf of Mexico hammerhead sharks and western Gulf of Mexico aggregated LCS; and Atlantic blacknose and Atlantic non-blacknose SCS south of 34° N. latitude.

### **Request for Comments**

Comments on this proposed rule may be submitted via *www.regulations.gov* or by mail. NMFS solicits comments on this proposed rule by [*insert date 30 days after date of publication in the FEDERAL REGISTER*] (see **DATES** and **ADDRESSES**).

### **Classification**

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated Atlantic HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

NMFS determined that the final rules to implement Amendment 2 to the 2006 Consolidated Atlantic HMS FMP (June 24, 2008, 73 FR 35778; corrected on July 15, 2008, 73



FR 40658), Amendment 5a to the 2006 Consolidated Atlantic HMS FMP (78 FR 40318; July 3, 2013), Amendment 6 to the 2006 Consolidated Atlantic HMS FMP (80 FR 50073; August 18, 2015), and Amendment 9 to the 2006 Consolidated Atlantic HMS FMP (80 FR 73128; November 24, 2015) are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic including the Gulf of Mexico and the Caribbean Sea as required under the Coastal Zone Management Act. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish opening dates and adjust quotas for the 2019 fishing year for the Atlantic commercial shark fisheries does not change the framework previously consulted upon; therefore, no additional consultation is required.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA analysis follows.

Section 603(b)(1) of the RFA requires agencies to explain the purpose of the rule. This rule, consistent with the Magnuson-Stevens Act and the 2006 Consolidated Atlantic HMS FMP and its amendments, is being proposed to establish the 2019 commercial shark fishing quotas, retention limits, and fishing seasons. Without this rule, the commercial shark fisheries would close on December 31, 2018, and would not open until another action was taken. This proposed rule would be implemented according to the regulations implementing the 2006 Consolidated

Atlantic HMS FMP and its amendments. Thus, NMFS expects few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated Atlantic HMS FMP and its amendments, based on the quota adjustments.

Section 603(b)(2) of the RFA requires agencies to explain the rule's objectives. The objectives of this rule are to: adjust the baseline quotas for all shark management groups based on any over- and/or underharvests from the previous fishing year(s); establish the opening dates of the various management groups; and establish the retention limits for the blacktip shark, aggregated large coastal shark, and hammerhead shark management groups in order to provide, to the extent practicable, equitable opportunities across the fishing management regions and/or sub-regions while also considering the ecological needs of the different shark species.

Section 603(b)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Provision is made under SBA's regulations for an agency to develop its own industry-specific size standards after consultation with Advocacy and an opportunity for public comment (see 13 CFR 121.903(c)). Under this provision, NMFS may establish size standards that differ from those established by the SBA Office of Size Standards, but only for use by NMFS and only for the purpose of conducting an analysis of economic effects in fulfillment of the agency's obligations under the RFA. To utilize this provision, NMFS must publish such size standards in the **Federal Register**, which NMFS did on December 29, 2015 (80 FR 81194). In this final rule effective on July 1, 2016, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS

11411) for RFA compliance purposes. NMFS considers all HMS permit holders to be small entities because they had average annual receipts of less than \$11 million for commercial fishing.

As of October 2017, the proposed rule would apply to the approximately 221 directed commercial shark permit holders, 269 incidental commercial shark permit holders, 154 smoothhound shark permit holders, and 113 commercial shark dealers. Not all permit holders are active in the fishery in any given year. Active directed commercial shark permit holders are defined as those with valid permits that landed one shark based on HMS electronic dealer reports. Of the 490 directed and incidental commercial shark permit holders, only 28 permit holders landed sharks in the Gulf of Mexico region and only 78 landed sharks in the Atlantic region. Of the 154 smoothhound shark permit holders, only 26 permit holders landed smoothhound sharks in the Atlantic region and none landed smoothhound sharks in the Gulf of Mexico region. NMFS has determined that the proposed rule would not likely affect any small governmental jurisdictions.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements as domestically implemented, domestic laws, and FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act.

Section 603(c) of the RFA requires each IRFA to contain a description of any significant alternatives to the proposed rule which would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities. Additionally, the RFA (5 U.S.C. 603(c)(1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: 1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; 3) use of performance rather than design standards; and, 4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities; therefore, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act; therefore, there are no alternatives considered under the third category.

This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures with adjustments, as specified in the 2006 Consolidated Atlantic HMS FMP and its amendments and the Environmental Assessment (EA) that accompanied the 2011 shark quota specifications rule (75 FR 76302; December 8, 2010). Thus, NMFS proposes to adjust quotas established and analyzed in the 2006

Consolidated Atlantic HMS FMP and its amendments by subtracting the underharvest or adding the overharvest as allowable. Thus, NMFS has limited flexibility to modify the quotas in this rule, the impacts of which were analyzed in previous regulatory flexibility analyses.

Based on the 2017 ex-vessel price (Table 3), fully harvesting the unadjusted 2019 Atlantic shark commercial baseline quotas could result in total fleet revenues of \$7,184,943. For the Gulf of Mexico blacktip shark management group, NMFS is proposing to increase the baseline sub-regional quotas due to the underharvests in 2018. The increase for the western Gulf of Mexico blacktip shark management group could result in a \$79,243 gain in total revenues for fishermen in that sub-region, while the increase for the eastern Gulf of Mexico blacktip shark management group could result in a \$9,781 gain in total revenues for fishermen in that sub-region. For the Gulf of Mexico and Atlantic smoothhound shark management groups, NMFS is proposing to increase the baseline quotas due to the underharvest in 2018. This would cause a potential gain in revenue of \$581,718 for the fleet in the Gulf of Mexico region and a potential gain in revenue of \$1,323,867 for the fleet in the Atlantic region.

All of these changes in gross revenues are similar to the changes in gross revenues analyzed in the 2006 Consolidated Atlantic HMS FMP and its amendments. The final regulatory flexibility analyses for those amendments concluded that the economic impacts on these small entities are expected to be minimal. In the 2006 Consolidated Atlantic HMS FMP and its amendments and the EA for the 2011 shark quota specifications rule, NMFS stated it would be conducting annual rulemakings and considering the potential economic impacts of adjusting the quotas for under- and overharvests at that time.

**Table 3. Average ex-Vessel Prices per lb dw for Each Shark Management Group, 2017.**

Region	Species	Average Ex-Vessel Meat Price	Average Ex-Vessel Fin Price
Western Gulf of Mexico	Blacktip Shark	\$0.51	\$11.03
	Aggregated LCS	\$0.51	\$12.51
	Hammerhead Shark	\$0.67	\$11.67
Eastern Gulf of Mexico	Blacktip Shark	\$0.62	\$8.22
	Aggregated LCS	\$0.43	\$13.00
	Hammerhead Shark	\$0.55	\$12.80
Gulf of Mexico	Non-Blacknose SCS	\$0.38	\$8.68
	Smoothhound Shark	\$1.50	\$1.91
Atlantic	Aggregated LCS	\$0.95	\$11.47
	Hammerhead Shark	\$0.41	\$13.91
	Non-Blacknose SCS	\$0.96	\$7.33
	Blacknose Shark	\$1.05	\$7.33
	Smoothhound Shark	\$0.70	\$1.63
No Region	Shark Research Fishery (Aggregated LCS)	\$0.80	\$12.40
	Shark Research Fishery (Sandbar only)	\$0.50	\$12.40
	Blue shark	\$1.40	\$11.44
	Porbeagle shark*	\$1.54	\$2.82
	Other Pelagic sharks	\$1.52	\$2.82

\*Used other pelagic shark ex-vessel prices for porbeagle sharks ex-vessel prices since there currently are no landings of porbeagle sharks.

For this rule, NMFS also reviewed the criteria at § 635.27(b)(3) to determine when opening each fishery would provide equitable opportunities for fishermen, to the extent practicable, while also considering the ecological needs of the different species. The opening dates of the fishing season(s) could vary depending upon the available annual quota, catch rates, and number of fishing participants during the year. For the 2019 fishing year, NMFS is proposing to open all of the shark management groups on the effective date of the final rule for

this action (expected to be on or about January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis because NMFS is not proposing to change the opening dates of these fisheries from the status quo.

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2018.

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Samuel D. Rauch, III,

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